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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

17 Cr. 680 (CM)

5 CRAIG CARTON and MICHAEL
6 WRIGHT,

Defendants.

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Conference

7 March 8, 2018
8 4:15 p.m.

9 Before:

10 HON. COLLEEN MCMAHON,

11 District Judge

12 APPEARANCES

13 GEOFFREY S. BERMAN

14 Interim United States Attorney for
15 the Southern District of New York

16 BY: BRENDAN F. QUIGLEY

ELISHA J. KOBRE

17 Assistant United States Attorneys

18 GOTTLIEB & JANEY, LLP

19 Attorneys for Defendant Carton

20 BY: ROBERT C. GOTTLIEB

DERRELLE M. JANEY

21 SETH J. ZUCKERMAN

22 THE LAW OFFICES OF ALAN S. FUTERFAS

Attorneys for Defendant Wright

23 BY: ALAN S. FUTERFAS

24 LAW OFFICES OF BETTINA SCHEIN

25 Attorneys for Defendant Wright

BY: BETTINA SCHEIN

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(Case called)

THE DEPUTY CLERK: Appearances.

MR. QUIGLEY: Good afternoon, your Honor. Brendan Quigley and Elisha Kobre for the United States.

MR. GOTTLIEB: Good afternoon, your Honor. For Mr. Carton, Gottlieb & Janey, by Robert Gottlieb.

MR. JANEY: And also for Mr. Carton, Gottlieb & Janey, Darrelle Janey, your Honor.

MS. SCHEIN: Good afternoon, Judge McMahon. Bettina Schein of counsel for Mr. Wright.

MR. FUTERFAS: Good afternoon, your Honor. Alan Futerfas, Law Offices of Alan Futerfas, for Mr. Wright.

THE COURT: Okay. Have a seat.

So what's going on, folks?

MR. QUIGLEY: Your Honor, since the last conference -- at the last conference your Honor asked us to produce any extant non-cell phone discovery by December 10. We complied with that.

Since then, we have produced Mr. Carton's cell phone, which was seized incident to his arrest; Mr. Wright's cell phone, which was seized in connection with his arrest.

We also produced returns on an e-mail account for Mr. Wright that we had a search warrant for.

In terms of any remaining discovery, on December 27 we obtained search warrants for five electronic devices belonging

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1 to Mr. Carton which we had obtained in a time since his arrest.
2 Three of those we haven't been able to get into, so we don't
3 anticipate producing those in discovery. Two of them we were
4 able to get into recently, and we are still reviewing. We
5 produced the underlying warrants to counsel for Mr. Carton
6 earlier today, and we will produce whatever is responsive to
7 the warrant soon.

8 THE COURT: "Soon" being?

9 MR. QUIGLEY: Within the next month, your Honor. As
10 soon as we get through it.

11 THE COURT: Okay. So I have a schedule, and I gather
12 that what remains to be done is to set a trial date, is that
13 right?

14 MR. QUIGLEY: That's true from our perspective, your
15 Honor.

16 MR. GOTTLIEB: Yes, your Honor. That's my
17 understanding.

18 MS. SCHEIN: Your Honor, if I may, on behalf of
19 Mr. Wright, we are requesting additional time to file our
20 motions, until May 18 -- they are currently scheduled to be
21 filed on April 20 -- because of the production of discovery
22 that we are assiduously going through, the most recent
23 discovery we received last Thursday, Friday, and this past
24 Tuesday. So we are working on reviewing all of the discovery,
25 which is -- which we must in order to file our motions, but we

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1 do seek a little more time to do so, because of the --

2 THE COURT: Well, especially apparently since you are
3 not going to get some of it until "soon," which means a month.
4 Okay. Sure. No problem. We will reset the motion schedule.

5 MS. SCHEIN: Thank you, your Honor.

6 MR. GOTTLIEB: Your Honor, with regard to setting the
7 motion schedule, our only concern, because we have no
8 objection, as long as it does not impact the September date
9 that your Honor --

10 THE COURT: You don't have a September date yet.

11 MR. GOTTLIEB: If --

12 THE COURT: I said, I said, I believe, trial may be
13 sometime in September, question mark, question mark, question
14 mark. Seven question marks in my notes.

15 Mr. O'Neill, did we set a trial date?

16 THE DEPUTY CLERK: I didn't put it in any memo after
17 the conference.

18 THE COURT: Okay.

19 MR. GOTTLIEB: Your Honor, I have gone over the
20 transcript. I know exactly what you are saying. You did not
21 set a definite September trial date. I only say that to your
22 Honor because we have been working under the comments you did
23 make in setting the motion schedule for April, with an eye
24 toward a September date. My client, Mr. Carton, very much
25 wants a speedy trial at this point. Again, your Honor, we have

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1 no problem in extending additional time for counsel to prepare
2 the motions. The one concern I have is that in that last
3 conference, when your Honor talked about the completion of the
4 discovery, it was indicated that the discovery, but for the
5 cell phones, would be completed by December 10.

6 THE COURT: Right.

7 MR. GOTTLIEB: But the problem is, your Honor, since
8 then there have been five productions, including as recently as
9 this morning, and there have been five productions not just of
10 cell phone information.

11 THE COURT: It does seem to be taking an awfully long
12 time.

13 MR. QUIGLEY: Your Honor, if I may, we produced --
14 your Honor ordered us to produce any non-cell phone discovery
15 by December 10. We got that. We produced the cell phones on a
16 rolling basis as your Honor asked. It has been difficult. The
17 delay has been in part due to the fact that some of these
18 devices are encrypted. If the defendants wanted to provide us
19 with the passwords, they could have done that. We have -- and
20 to the extent we have gotten other things in, which has largely
21 been odds and ends, we have produced those. The balance of the
22 discovery in this case was produced in the first and second
23 productions, which happened in late November and early
24 December.

25 MR. GOTTLIEB: Your Honor, I'm not here to take issue

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1 with the government. That isn't why I raised it. The fact of
2 the matter is, we all have the records of the productions in
3 January, February, March 2nd, March 8, March 6 and March 8,
4 records which went far beyond anything that would have been
5 encrypted. We are talking about casino records. We are
6 talking about bank records. I only raise the issue because we
7 have no objection for additional time for the motions --

8 THE COURT: Fine.

9 MR. GOTTLIEB: -- as long as we can come as -- as --
10 hopefully we were hoping that September trial date.

11 THE COURT: Good. And what September trial date were
12 you thinking that you wanted?

13 MR. GOTTLIEB: Whatever September date is good for the
14 court.

15 THE COURT: Okay. My first question about September
16 trial dates is always, who is impacted by the fact that Rosh
17 Hashanah is on the 10th and 11th and Yom Kippur is on the 18th?
18 Is anyone impacted by that?

19 MR. KOBRE: I am, your Honor.

20 MS. SCHEIN: Yes, your Honor, I am.

21 THE COURT: Thank you. How is the 24th? How is
22 September 24?

23 MR. KOBRE: Your Honor, so, there is another Jewish
24 holiday.

25 THE COURT: I know. There are many. We have got

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1 Sukkoth. You do Simchat Torah. You do the whole megillah
2 right? Wrong holiday, but I love the phrase. So when is
3 Simchat Torah?

4 MR. KOBRE: So it's all over, your Honor, by the first
5 week -- by October 2 is the last day of the Simchat Torah.

6 THE COURT: Okay. And of course the following Monday
7 is Columbus Day. And then I run into a problem when am I in
8 Part I.

9 THE DEPUTY CLERK: The 15th.

10 THE COURT: The week of the 15th and 22nd, I'm the
11 Part I judge, and I just can't do a trial when I am the Part I
12 judge. Doesn't work. So I'm prepared to go on the 29th of
13 October. I am sorry, but the Jewish holiday problem is always
14 an issue. I don't schedule them for Christmas week either.

15 MR. GOTTLIEB: Did I just hear it would be October 29?

16 THE COURT: That's what it would be.

17 MR. GOTTLIEB: So if I can just advise your Honor of
18 the potential problem. I have a murder trial right down the
19 block here. We are conferencing it this Tuesday for the final
20 trial date.

21 THE COURT: Good. Tell them you are on trial the 29th
22 of October. Usually I'm the second to pick.

23 MR. GOTTLIEB: If we were on trial in September or at
24 the beginning of October.

25 THE COURT: But we can't be, because the prosecutor is

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1 going to be out for the Jewish holidays, as is, at least for
2 some of them, Mr. Wright's lawyer. So that's a nonstarter.

3 MR. GOTTLIEB: So as early as your Honor can set it,
4 we will do it.

5 THE COURT: Believe me, I would set it for as early as
6 the 9th of October if I could, but I'm now the Part I Judge the
7 weeks of the 15th and the 22nd, and that's a problem. Okay?
8 So that means the earliest I can set it, with great regret, I
9 assure you, Mr. Futerfas, I would rather do this sooner --

10 MR. GOTTLIEB: Mr. Futerfas is the distinguished
11 gentleman here. I'm Gottlieb.

12 THE COURT: Mr. Gottlieb. I assure you that I would
13 rather set it for September the 10th, but I can't do that,
14 because it is the first day of Rosh Hashanah. Okay? So, it is
15 going to be October 29. That's when it is going to be.

16 MR. GOTTLIEB: Finally, your Honor, is it understood
17 that the discovery that we have received as of today is the
18 final group of discovery? Because I spoke to Mr. Quigley a
19 number --

20 THE COURT: No, it's not. He told me. He just told
21 me that he is prepared to produce things that you don't have
22 yet "soon," which he defines as within a month.

23 Did I get that right, Mr. Quigley?

24 MR. QUIGLEY: That's right, your Honor. That's the
25 time we anticipate it will take us.

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1 THE COURT: So you don't have everything yet,
2 Mr. Gottlieb.

3 MR. QUIGLEY: And, your Honor, just --

4 THE COURT: You will have it "soon," in the
5 government's parlance.

6 MR. QUIGLEY: And anything else we get in we will
7 produce promptly.

8 THE COURT: What you are saying is that by a month
9 from today you will certainly have produced everything that you
10 have got.

11 MR. QUIGLEY: That we have currently in our
12 possession.

13 THE COURT: In your possession. If something shows up
14 in July, you will produce it in July.

15 MR. QUIGLEY: Absolutely, your Honor.

16 THE COURT: Right. Are we okay with that,
17 Mr. Gottlieb? I mean, we are not okay with it.

18 MR. GOTTLIEB: I am disappointed.

19 THE COURT: I accept that. I am disappointed, too. I
20 am disappointed that we are not going to trial in September,
21 but they set the Jewish calendar like 5,900 years ago, and
22 there is nothing I can do about it.

23 MR. GOTTLIEB: I am aware of that. Thank you.

24 THE COURT: Mr. Futerfas, I'm sure I got you guys
25 backward on the sheet.

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1 MR. FUTERFAS: Not a problem, your Honor. One
2 question as to Mr. Quigley's last statement. I appreciate that
3 if something comes in unexpected in July or whatever, but is
4 there any, can I ask, through your Honor's auspices, are there
5 any outstanding requests that the government is currently aware
6 of that there is some significant amount of information that
7 could be coming in later? That is the only thing I wanted
8 to --

9 THE COURT: You are not anticipating any huge amount
10 of additional discovery at the last minute, are you,
11 Mr. Quigley?

12 MR. QUIGLEY: No, your Honor. We don't have any
13 outstanding search warrants.

14 THE COURT: And you are not anticipating anything like
15 one of these 11th hour and 59th minute superseding indictments?

16 MR. QUIGLEY: No, your Honor.

17 THE COURT: Okay.

18 MR. FUTERFAS: Thank you, your Honor.

19 THE COURT: I'm sorry that the trial date can't be
20 earlier, but I think we just have to acknowledge that counsel
21 for both sides have religious obligations, and it just happens
22 in the early fall every year that we have to deal with that.

23 Okay. So let's reset the motion schedule. You wanted
24 May 18? Was that right, counsel?

25 MS. SCHEIN: Yes, your Honor.

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1 THE COURT: Okay. So May 18 for defense motions.
2 That means that the government response should come by June 8.
3 Defense reply should be by June 15.

4 Then we will have how about some time the week of the
5 16th of July, Mr. O'Neill, for decision on the motions?

6 THE LAW CLERK: July 19 at 4:00.

7 THE COURT: July 19, 4:00.

8 MS. SCHEIN: Your Honor, could we have two weeks for
9 our reply?

10 THE COURT: No. One.

11 Hearing no objection, July 19 at 4:00 we will meet
12 again. At that point we are going to set a schedule for 404(b)
13 and all of the other pretrial motions that have to be dealt
14 with, okay?

15 And time is excluded until July 19 in the interests of
16 justice, defendants' interest in a speedy trial being
17 outweighed by a need to review additional discovery prior to
18 making motions.

19 By the way are we anticipating any interesting motions
20 here?

21 MR. GOTTLIEB: Your Honor, we have actually been
22 talking about it. Perhaps. That's all I can say.

23 THE COURT: Perhaps. Okay. Well, I could force the
24 government. I can't really ask you to tip your hand yet.
25 That's okay.

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1 MR. GOTTLIEB: Thank you.

2 THE COURT: You're welcome.

3 All right. Then I will see you all some months from

4 now.

5 COUNSEL: Thank you, your Honor.

6 THE COURT: Thank you.

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